

ILLINOIS POLLUTION CONTROL BOARD

July 18, 1996

GILBERT & LENDA MARSHALL,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 96-179
	)	(Enforcement - Air/Noise)
	)	
DANNY LINGENFELTER,	)	
INDIVIDUALLY AND AS PRESIDENT OF	)	
CENTRAL ILLINOIS DIRT RIDERS	)	
ASSOCIATION,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion for Reconsideration" filed on June 28, 1996 by complainants, Gilbert & Lenda Marshall. The complainants request that the Board reconsider its order of June 6, 1996 dismissing this matter. The Board found the complained of activities represented an "organized amateur or professional sporting activity" and therefore were exempted by Section 25 of the Environmental Protection Act (Act) (415 ILCS 5/25 (1994)) from the Board's noise regulations.

In support of their motion, the complainants report that the case pending against respondent in Fulton County Circuit Court has been settled by agreed order on May 29, 1996. Pursuant to the order, respondent cannot conduct any racing activities on his property without first obtaining a conditional use permit. Respondent does not have such a permit and has indicated to complainants that he does not plan to seek a permit. Complainants also allege that the Board erred in finding that the repair activities were ancillary to the racing and therefore also exempted from the noise regulations. Complainants argue that the repair shop pre-dates the racetrack. Complainants request leave to amend or replead their complaint to address dust and air pollution aspects of the complaint.

In ruling on a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County of Board of Whiteside PCB 93-156, (March 11, 1993), we stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158, (1st Dist. 1992).)"

The Board hereby grants the motion for reconsideration as the settlement of the pending court case represents newly discovered evidence. After reviewing the filings in this matter the Board finds no compelling reason to modify its order of June 6, 1996. The Board finds its order is supported by the complaint and the briefs filed by the parties on the issue of whether the activities alleged in the complaint represent an "organized amateur or professional sporting activity". The Board finds that based on the facts as alleged in the complaint it did not err in finding that the activities at the repair shop were ancillary to the racing activities.

Amending the complaint to address dust and air pollution violations should be addressed by the filing of a new complaint properly alleging any such violations. Complainants are not prohibited from filing a new complaint in this matter correcting these or any deficiencies in the complaint as originally filed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board